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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ELICA XIOMARA SUDERMAN,

Defendant and Appellant.

F072512

(Super. Ct. No. MCR050891)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Madera County. David D. Minier, Judge. (Retired Judge of the Madera County Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Allan E. Junker, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Amanda D. Cary and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Kane, J. and Detjen, J.

Elica Xiomara Suderman pled guilty to assault with a deadly weapon and admitted the victim suffered great bodily injury. As part of the plea agreement, she was sentenced to a prison term of five years.

At the sentencing hearing, the trial court issued a protective order at the victim's request. Suderman argues, and the Attorney General agrees, there is no authority for issuance of a protective order in this case. Accordingly, we will affirm the judgment and order the protective order vacated.

### **FACTUAL AND PROCEDURAL SUMMARY**

The complaint charged Suderman with attempted murder (Pen. Code, §§ 187, subd. (a) & 664),<sup>1</sup> and assault with a deadly weapon (§ 245, subd. (a)(1)). Both counts also alleged that Suderman personally inflicted great bodily injury when she attacked the victim within the meaning of section 12022.7, subdivision (a), and she personally used a deadly weapon (knife) within the meaning of section 12022, subdivision (b)(1).

According to the probation report, the charges arose out of an incident that began with Suderman and the victim, a friend, going to a bar for drinks and entertainment. They left the bar when Suderman became so intoxicated she began acting inappropriately (the exact details are unclear). On the way home, the victim told Suderman she was going to drop Suderman off at her house and then return to the bar. This apparently upset Suderman because she first struck the victim, and then stabbed the victim in the neck. The victim had to be transported via helicopter for treatment.

A plea agreement was reached that required Suderman to plead guilty to the assault with a deadly weapon count and admit the great bodily injury enhancement. In exchange, the remaining count and enhancement were dismissed, and the parties agreed the maximum term of imprisonment would be seven years. Suderman was sentenced to

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

the low term of two years for the assault, plus three years for the enhancement for a total term of five years.

## **DISCUSSION**

Suderman raises a single issue in this appeal. At the sentencing hearing, the victim's advocate spoke on behalf of the victim. She explained the victim remained in fear of Suderman, and requested a protective order be issued. Neither party objected, and the trial court issued the requested protective order.

Suderman argues there is no statutory authority for issuance of the protective order. The People concede the protective order was issued erroneously, and ask us to affirm the judgement but strike the protective order.

Suderman's argument is well taken. On its face, the protective order is defective. The trial court utilized Judicial Council form CR-160, and indicated it was issued pursuant to the authority of section 1203.097.

Section 1203.097 permits issuance of a protective order in a case of domestic violence when the defendant is placed on probation. This is not a case of domestic violence. The parties agree the victim and Suderman were nothing more than friends. Suderman was in fact married at the time of the incident. Moreover, Suderman was sentenced to prison, not placed on probation. The trial court erred in relying on section 1203.097.

Neither the parties, nor this court, located any authority for the issuance of a protective order at the time of sentencing in a case such as this. Our research located numerous statutes which authorize protective orders. Each statute applies in specific circumstances. (E.g, § 136.2 [witness intimidation]; § 273.5 [spousal abuse]; § 368, subd. (1) [elder abuse]; § 1201.3 [sexual offense involving a minor]; Fam. Code, § 6320 [family dispute orders]; Code Civ. Proc., § 527.6 [protective order after hearing]; Code Civ. Proc., § 527.8 [protective order regarding workplace violence].) None of the statutes apply to the circumstances of this case.

For all of these reasons, the protective order issued in this case is defective and must be vacated.<sup>2</sup>

### **DISPOSITION**

The judgment is affirmed. The protective order issued by the trial court at the sentencing hearing is vacated.

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<sup>2</sup> We also observe the protective order is for a period of three years. Suderman will be in prison for the entire term of the protective order, thus making it meaningless.